

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

**CITY OF CHESTER**

**Plaintiff**

**v.**

**CHESTER WATER AUTHORITY**

**Defendant**

**DOCKET No.: CV-2019-005976**

**NICOLE WHITAKER, WANDA MANN,  
MICHELLE CONTE, TYLER  
THERRIAULT, ESQUIRE, KATHRYN A.  
TOWNSEND, VICTOR S. MANTEGNA,  
JAMES D. NEARY, DIANE AND JAMES  
BOHR AND WOLF EQUITY, L.P.**

**Intervenor**

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**ORDER AND DECISION**

**AND NOW**, this 24<sup>th</sup> day of April, 2020, upon consideration of the City of Chester’s Motion for Judgment on the Pleadings and Defendant Chester Water Authority’s (“CWA”) response thereto, and consideration of the Intervenor’s Motion for Partial Judgment on the Pleadings, and all pleadings, memorandum docketed herein, this Court hereby issues the following;

1. The City of Chester filed an Amended Complaint on August 13, 2019 against the CWA containing One Count in Declaratory Judgment requesting in the prayer for relief that this Court “declare that the City is authorized by law to consummate the Potential Transaction and to convey the projects to the City for its own uses under section 5622 (53 Pa.C.S.A. § 5622), including possible completion of the Potential Transaction.”

2. Paragraph 67 of the Amended Complaint defines the Potential Transaction by referencing section I-4 of a June 12, 2019 City of Chester Request for Proposals for Acquisition of All Assets of the CWA (“RFP”) which provides:

“The City has determined that it will consider proposals under which it will, in simultaneous transactions, satisfy all outstanding obligations of the CWA, including defeasing obligations under the outstanding indentures, obtain a conveyance of all the assets of the CWA either by contract or operation of law, terminate the existence of the CWA, and sell the Water Systems Assets as a complete system to a third party. This process is designed to comply with Act 12, if applicable and the MAA” (Municipality Authorities Act, 53 Pa.C.S.A. §§ 5601, et seq., as amended).

3. The instant action is one of four related proceedings in this Court between the City of Chester, CWA, Aqua Pennsylvania, Inc., and the Intervenors regarding the identity of the governing body of the CWA (53 Pa.C.S.A. §5610(a.1)) and the potential termination or conveyance of the CWA (53 Pa.C.S.A. §§ 5619, 5622). The parties also differ on CWA purposes and powers (53 Pa.C.S.A. §5607) and the application of funds produced from any sale of the CWA (53 Pa.C.S.A. § 5612). The related cases are;

(1.) *In Re; Chester Water Authority Trust, Delaware County Common Pleas Court, Orphans’ Court Division No.: 217-2019.*

(2.) *Chester Water Authority v. Aqua Pennsylvania, Inc., and City of Chester, Delaware County Common Pleas Court, Civil Division No., 2019-5400.*

(3.) *Aqua Pennsylvania, Inc., v. Chester Water Authority and City of Chester, Delaware County Common Pleas Court, Civil Division No.: 2019-002924.*

4. This Court has issued Orders on injunction and preservation of status quo applications at *No.: 217-2019* and *No.: 2019- 5400* and the parties currently have eight (8) appeals pending in the Commonwealth Court of Pennsylvania which are currently stayed by agreement of counsel at Nos.: 1343, 1393, 1447 C.D. 2019, 1013, 1313, 1403, 1448 C.D. 2019 and 57 C.D. 2020. All counsel have agreed that to assist this Court and the Commonwealth Court of Pennsylvania in identifying pertinent issues of law and any factual disputes in this action and at *No.: 217-2019* for timely and expedited review of the merits. See Court Order at *No.: 217-2019, dated February, 3, 2020.*

5. The City of Chester incorporated the Chester Water System pursuant to Articles of Incorporation on July 6, 1939 (¶ 6 and Exhibit A to Amended Complaint). The City renewed the Charter and amended the entity's name to the Chester Water Authority in 1965 and again renewed the Charter in 1998 (¶ 12 of Amended Complaint). From 1939 to 2012 the City of Chester appointed all five directors of the CWA (¶ 14 of Amended Complaint).

6. Effective August 27, 2012, Section 5610 (a.1) of the MAA, was amended to provide that if a water authority incorporated by one municipality provides water services to residents in at least two counties and has water projects in more than two counties where the combined population of the served municipalities, excluding the incorporating municipality, is at least five times the population of the incorporating municipality, the governing body shall be comprised of three members from each county in which the services to residents are provided and three members appointed by the incorporating municipality. CWA has been governed by a nine-member body since this provision amendment became effective.

7. The City of Chester in its Amended Complaint submits that the 2012 legislative amendment to Section 5610 (a.1) did not convert the CWA to a joint authority pursuant to

Section 5604 of the MAA (53 Pa.C.S.A. §5604). The City of Chester further asserts that the amendment did not modify MAA provisions to terminate (§5619) or convey (§5622) the CWA. (¶ 28 of Amended Complaint). The City maintains that as the sole incorporator, Section 5622 authorizes it to “unilaterally terminate the CWA’s existence and/or to unilaterally acquire any project of the CWA” (¶ 38 of Amended Complaint).

8. The CWA in its Answer and New Matter to the Amended Complaint aver that its origin can be traced back to 1866, that it was formally incorporated on July 6, 1939 and cite *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. Ct. 1949) for additional organization information (¶ 6 Answer).

9. This Court in a September 19, 2019 Opinion issued in support of Orders entered pursuant to injunctive applications at *No.: 2019-5400* wrote as follows: “The Authority commenced in 1939 with sixty-seven (67) customers in the City of Chester and it presently serves over two-hundred thousand (200,000) customers in thirty-three (33) separate municipalities located in Chester and Delaware County. Approximately twenty-one percent (21%) of CWA customers reside in the City of Chester.” (p. 8 of Opinion).

10. This Court further wrote: “In 2017, Aqua Pennsylvania, Inc. made an unsolicited bid to purchase the CWA in the alleged amount of three hundred and twenty million dollars (\$320,000,000.00). At that time, the CWA Board voted unanimously to reject the offer. (Complaint, para. 28.) Informed of that value, the City of Chester which has faced economic demands, started to explore methods to monetize the assets of CWA. (Complaint, para. 33.) Thereafter until March, 2019, there were “settlement negotiations” between CWA and Appellant (City of Chester) for an arrangement wherein Appellant would not dissolve the CWA and the CWA would provide consideration in exchange for said promise. (Complaint, paragraph 36 and

37.) However, no settlement agreement was reached and as far as this Court has been made aware, settlement negotiations are no longer ongoing.” (pgs. 3, 4 of Opinion).

11. CWA submits that Section 5607(d) of the MAA entitled Powers authorizes the CWA to “... sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it”. §5607(d)(4). The CWA in the Orphans Court action pending in this jurisdiction seeks to transfer a substantial portion of its assets to the Chester Water Authority Trust pursuant to Article I, Section 27 of the Pennsylvania Constitution known as the Environmental Rights Amendment. *Pennsylvania Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017).

12. Additionally, CWA cites section 5622(a) and posits that the 2012 legislative reformation of its Board to a nine-member committee representing the City of Chester and the Counties of Delaware and Chester removed the exclusive authority of the City of Chester to govern unilaterally to “establish, maintain or operate” the projects of the CWA. §5622(a). The CWA submits that his provision would bar the City of Chester’s declaratory action herein.

13. The CWA further contends that if this Court would authorize the City of Chester to act individually and transfer all CWA assets to a third party, Section 5612 (a.1) would mandate that all net proceeds of a sale not be used for any purpose other than the mission or purpose of the CWA. Hence, proceeds of a sale could not be used for general funding purposes for the City of Chester.

14. The Intervenors’ Answer and New Matter in the Nature of a Request for Declaratory relief to Plaintiff’s Amended Complaint was submitted in support of CWA and seeks a declaration that the City of Chester is barred from selling the CWA assets due to 1) the Environmental Rights Amendment, 2) section 5622(a.1) of the MAA, 3) the Public Trust

Doctrine of 1915, and 4) the Donated and Dedicated Property Act of 1959. 53 Pa.C.S. §§ 3381-3386, *In re Estate of Ryers*, 987 A.2d 1231 (Pa. Cmwlth. 2009) (Intervenors Answer and New Matter ¶¶ 142 to 167.)

15. On December 10, 2019 Intervenors filed a Motion for Partial Judgment on the Pleadings requesting initial relief that the City of Chester be precluded from any unilateral action impacting the CWA and its assets pursuant to the applicable provisions of the MAA. The Intervenors also seek a declaration that the Environmental Rights Amendment is applicable to the non-renewable resources held by the CWA.

16. The City of Chester filed its Motion for Judgment on the Pleadings on February 3, 2020. The CWA answered on March 2, 2020.

### **DECISION**

17. After thorough review of the pleadings and memorandums in support and opposition thereto submitted by able counsel for the City of Chester, the CWA and the Intervenors, this Court enters the following Conclusions of Law.

18. The 2012 legislative amendment to Section 5610(a.1) established the City of Chester, the County of Chester and the County of Delaware as the governing body of the CWA.

19. This amendment requires that any conveyance of the CWA pursuant to Section 5622 (a) be conducted and authorized by the City of Chester, the County of Chester and the County of Delaware as the governing body which has the power collectively to establish, maintain or operate the projects of the CWA.

20. The 2012 legislative amendment to Section 5610 (a.1) reconstituting the governing body of the CWA waived any obligation for the City of Chester, the County of Chester and Delaware County to amend the CWA Articles of Incorporation pursuant to Section 5603 of the MAA (53 Pa.C.S.A. §5603) or to formally join the CWA pursuant to Section 5604 (53 Pa.C.S.A. §5604). The City of Chester, the County of Chester and the County of Delaware may elect pursuant to Section 5604 to withdraw from the CWA pursuant to the provisions established therein.

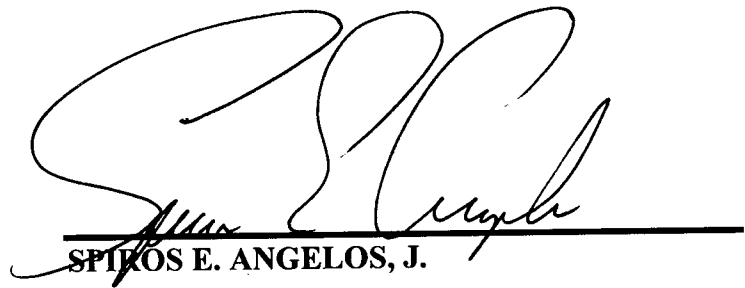
21. The portion of the request for declaratory relief sought by the Intervenors for interpretation of Article I Section 27 of the Pennsylvania Constitution is dismissed without prejudice. All relief sought therein is identical to the demands sought by the Intervenors and the CWA itself in the Orphans Court proceedings in this jurisdiction. *No. : 2019-000217*. Moreover, additional and indispensable parties including the Commonwealth of Pennsylvania, Department of Environmental Protection, the Susquehanna River Basin Commission, Wells Fargo Bank, N.A., Aqua Pennsylvania, Inc., and the Counties of Delaware and Chester have entered appearances in that proceeding and this Court will promptly address pending motions presented at that docket.

### **ORDER**

This Court hereby **DENIES** the Motion for Judgment on the Pleadings filed by the Plaintiff City of Chester. This Court further **GRANTS IN PART** that portion of the Intervenors' Motion for Partial Judgment on the Pleadings which requested that the City of Chester

Complaint at this docket be **DISMISSED**. This Court **DISMISSES WITHOUT PREJUDICE** the Intervenor's request for Declaratory relief pursuant to Article I Section 27 of the Constitution of the Commonwealth of Pennsylvania. That prayer for relief shall be addressed in the Delaware County Court of Common Pleas Orphans Court Division docket *no.*: 217- 2019.

**BY THE COURT:**



A handwritten signature in black ink, appearing to read "Spiros E. Angelos", is written over a solid horizontal line. Below the line, the name "SPIROS E. ANGELOS, J." is printed in a bold, black, sans-serif font.